

**Brenal Electric, Inc. and Local 25, International
Brotherhood of Electrical Workers, AFL-CIO.
Case 29-CA-10545**

10 September 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 27 February 1984 Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.

As more fully set forth in the attached decision, the judge found that on 13 June 1983,² immediately on learning of its employees' union activities, the Respondent, by its owner Frank Lutz Jr., violated Section 8(a)(1) of the Act by coercively interrogating several employees, by telling employees it had no intention of dealing with the Union, by soliciting grievances, by promising benefits, and by threatening to close rather than recognize the Union. We affirm these findings. We also find that the Respondent violated Section 8(a)(1) on 13 June by individually polling employees without any legitimate purpose about whether they had signed union cards. See *Struksnes Construction Co.*, 165 NLRB 1062 (1967).

The General Counsel excepts, inter alia, to the judge's failure to find that the Respondent also violated Section 8(a)(1) by telling employee Morris on 14 June that the Plainview job was slowing down and that he should choose two men for layoff. We find merit in this exception. Morris communicated the Respondent's message to the rest of the employees at the Plainview site and the employees selected two individuals for layoff. The Respondent offered no evidence that the Plainview job was in fact slowing down. To the contrary, the record evidence shows that the Plainview job was only half completed at this time and that the Respond-

ent was advertising in the newspaper for additional help. Lutz' statement to Morris constituted a threat of layoff which violates Section 8(a)(1).

The judge also found that the Respondent violated Section 8(a)(5) on 13 June by engaging in direct dealing with the employees, and that the Respondent violated Section 8(a)(3) by instituting a new work rule in retaliation for the employees' union activities and by discharging employees Raymond Goding and Larry Beauchamp. We agree with these findings. In affirming the finding that Lutz discharged employees Goding and Beauchamp by his comments to them on 13 June, we note that the record shows that Beauchamp did not know where he was assigned that day and that Lutz admitted on cross-examination that he realized Goding and Beauchamp thought they had been discharged but that he did nothing to correct that impression.

The judge found that the Respondent further violated Section 8(a)(3) on 14 June by discharging the entire bargaining unit. We agree with this finding. The General Counsel excepts to the judge's finding that the Respondent made valid offers of reinstatement to several employees in the unit on the grounds that other statements and actions of the Respondent were inconsistent with these alleged offers and that the Respondent's entire course of conduct clearly indicated that such offers were conditioned on renunciation of the Union. Accordingly, the General Counsel argues that the Respondent has failed to carry its burden of demonstrating a good-faith effort to communicate an offer of reinstatement to the employees. We find merit in this exception. While we agree with the judge that the Respondent's 29 August letter was not a valid offer of reinstatement because, in light of the Labor Day weekend, it did not provide sufficient time for the employees to respond, we also find that it was invalid because it was not "specific, unequivocal and unconditional." *L.A. Water Treatment*, 263 NLRB 244, 246 (1982). The 29 August letter merely offered the employees an opportunity to return to the job they held on 14 June. The Respondent's 14 June statement that it was going out of business and that the employees could stay on for a few days while they looked for other employment, in light of its earlier unlawful conduct³ and refusal to deal with the Union, amounted to nothing more than an offer for a temporary job apparently conditioned on the employees renouncing the Union.

¹ The Respondent and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² All dates hereafter refer to 1983.

³ As set forth by the judge, this extensive unlawful conduct included promising wage increases and other benefits conditioned on the withdrawal of support for the Union and a threat that the Respondent would never deal with the Union. Additionally, the Respondent instituted a new disciplinary rule in retaliation for the employees' union activity.

Contrary to the judge, we further find that the post-14 June statements by Lutz and Byrne (that the employees' jobs were still there) were also not valid offers of reinstatement. Like the 29 August letter, these statements were, in light of all the circumstances, not "specific, unequivocal and unconditional," and amounted to offers of unlawfully conditioned temporary jobs. In addition, even assuming they were otherwise valid, their genuineness was negated by the Respondent's 14 June letter to employees asserting that the employees had voluntarily resigned but not containing an offer of reinstatement, and by the Respondent's failure to respond to the Union's 21 June telegram in which the employees offered to return to work. See *Betts Baking Co.*, 173 NLRB 1018 (1968), *enfd.* as modified 428 F.2d 156, 158 (10th Cir. 1970). We further find, contrary to the judge, that the record contains insufficient evidence that the employees could have assumed that Byrne, who had been a member of the unit when the employees were working for the Respondent, was authorized to make reinstatement offers on behalf of the Respondent. A clear showing of agency is necessary to allow an offending employer to pass on its obligation to make an offer of reinstatement to a third party. *Michael M. Schaefer*, 246 NLRB 181 (1979); *Rafaere Refrigeration Corp.*, 207 NLRB 523 (1973). We also find, contrary to the judge, that the Respondent's late July statement to employee Morris that his job was still available did not constitute a valid offer of reinstatement. It was invalid not only for the same reasons as the mid-June statements and the 29 August letter, but also because it occurred in the context of the Respondent's involvement in the denial of Morris' unemployment benefits and is otherwise negated by the Respondent's failure to return Morris' early September calls asking to return to work.

Finally, we find in agreement with the judge that a bargaining order is necessary to remedy the Respondent's extensive unfair labor practices. In adopting this finding, we note that no steps have been taken that would mitigate the adverse impact of the Respondent's unfair labor practices on employee rights. To the contrary, the record shows that the Respondent granted benefits to those employees who returned to work in order to discourage support for the Union, delayed returning employee Morris' final paycheck, and thwarted the employees' efforts to obtain unemployment benefits by alleging that the employees had not been fired. In light of the small size of the unit, the role of the Respondent's owner, and the egregious nature and pervasive extent of the violations, particularly the threat of closure, the promise of benefits, and the

discharge of the entire bargaining unit, we conclude that the possibility of erasing the effect of the Respondent's unfair labor practices and ensuring a fair election by use of traditional remedies is slight and that the employee sentiment expressed through the authorization cards would be better protected by a bargaining order. To hold otherwise in this case would allow the Respondent to benefit from its unlawful conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Brenal Electric, Inc., Hicksville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and re-letter the subsequent paragraphs.

"(b) Polling its employees about whether they had signed union cards."

2. Insert the following as paragraph 1(f) and re-letter the subsequent paragraphs.

"(f) Threatening its employees with layoff if they support the Union."

3. Substitute the following for paragraph 2(a).

"(a) Offer to Peter Aybar, John Foster, Raymond Goding Jr., Herbert Graham, Thomas Loney, James Morris, Michael Murphy, Kenneth Newton, and Perry Ragusa full and immediate reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them, as well as Larry Beauchamp and Robert Scott, whole for any loss of pay suffered as a result of the discrimination against them in the manner set forth above in the section entitled 'The Remedy.'"

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT question our employees regarding their support for Local 25, International Brotherhood of Electrical Workers, AFL-CIO or any other labor organization.

WE WILL NOT poll our employees about whether they had signed union cards.

WE WILL NOT promise wage increases or other benefits to our employees on the condition that they withdraw their support for the Union.

WE WILL NOT threaten to close our operation rather than recognize and negotiate with the Union.

WE WILL NOT threaten our employees that we will refuse to deal with the Union.

WE WILL NOT threaten our employees with layoff if they support the Union.

WE WILL NOT institute new work rules or disciplinary rules in retaliation for our employees' activities on behalf of the Union.

WE WILL NOT discharge or otherwise discriminate against our employees because of their activities on behalf of the Union.

WE WILL NOT deal directly with our employees, solicit grievances from our employees, or otherwise bypass the Union at a time when the Union had been designated by our employees as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer to Peter Aybar, John Foster, Raymond Goding Jr., Herbert Graham, Thomas Loney, James Morris, Michael Murphy, Kenneth Newton, and Perry Ragusa full and immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make Aybar, Foster, Goding, Graham, Loney, Morris, Murphy, Newton, and Ragusa, as well as Larry Beauchamp and Robert Scott, whole, with interest, for any loss of earnings they may have suffered because of our discriminatory conduct against them.

WE WILL expunge from our files any reference to the termination of the above-named employees, and will notify them in writing that this has been done and that evidence of this unlawful termination will not be used as a basis for future personnel actions against them.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All full time and regular part-time electrician employees employed by us at our Hicksville, New York and Plainview, New York jobsites,

exclusive of all office clerical employees, professional employees, guards and supervisors as defined in the Act.

BRENAL ELECTRIC, INC.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was tried before me on October 17, 18, and 19, 1983, in Brooklyn, New York, and New York, New York. The complaint and notice of hearing herein issued on July 29, 1983,¹ and was based on an unfair labor practice charge, and amended charge, filed by Local 25, International Brotherhood of Electrical Workers, AFL-CIO (the Union), on June 14 and July 28, respectively. The complaint alleges basically that the Union represented a majority of the employees of Brenal Electric, Inc. (Respondent), in an appropriate unit, that the Union made a valid request for recognition, and that Respondent thereafter engaged in unfair labor practices precluding the conducting of a fair election, thereby warranting a bargaining order pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). These unfair labor practices are alleged to include 8(a)(1)(5) violations such as threats, interrogations, solicitation of grievances, and the offer and granting of increased benefits to induce its employees to withdraw their support from the Union, and the 8(a)(3) violation of discharging 12 employees. All these violations are alleged to have occurred on June 13 and 14. Respondent, while admitting the appropriateness of the unit, and the fact that Frank Lutz Jr. is Respondent's owner and an agent thereof, denies the commission of the unfair labor practices.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with its principal office located in Hicksville, New York (the office), is engaged in providing electrical contracting services and related services. During the past year, Respondent, in the course of its business operations, provided electrical services valued in excess of \$50,000, of which services valued in excess of \$50,000 were furnished to, among others, Darren Enterprises, Inc. and Teixeira Co., each of which firms is located in the State of New York and annually purchases goods valued in excess of \$50,000 directly from firms located outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Unless otherwise stated, all dates herein refer to the year 1983.

III. THE FACTS

A. *Union's Majority Status*

The appropriate unit herein is all full-time and regular part-time electrician employees of Respondent employed at its Hicksville, New York and Plainview, New York jobsites, exclusive of all office clerical employees, professional employees, guards, and supervisors as defined in the Act. The parties also stipulated that the following individuals constituted the entire unit on June 14:²

Peter Aybar	Herbert Graham
Kenneth Newton	Michael Murphy
John W. Foster	Douglas Byrne
Raymond Goding Jr.	Robert Scott
James M. Morris	Larry Beauchamp
Thomas Loney	Robert Lutz
Perry Ragusa	

On June 6, Fred Kerbs, business representative of the Union, held a meeting with Respondent's employees at the union office. He spoke to them collectively and asked them if they were interested in signing authorization cards for the Union. He then spoke separately with each one and asked them if they wished to sign cards for the Union. The following executed cards dated June 6: Aybar, Newton, Foster, Goding, Morris, Loney, Ragusa, Graham, Murphy, Byrne, Scott, and Beauchamp. By a letter dated June 10, and sent by certified mail, the Union wrote as follows (inter alia) to Respondent:

This is to inform you that a majority of the employees employed by your firm request that you recognize and bargain with us concerning the wages, hours and other terms and conditions of their employment.

Respondent admits that this letter was delivered to its premises over the weekend, and was first seen by Lutz on Monday, June 13. It is clear that on that day, as well as June 14, the Union represented a majority of Respondent's employees in an appropriate unit.

B. *The Events of June 13*

Beauchamp (who returned to Respondent's employ in September) testified that, on June 13, he reported to Respondent's office about 7:30 a.m., as was his custom; ("We usually had coffee in the morning, and then he [Lutz] sent us out wherever we were going to go"). As Beauchamp went upstairs to Respondent's office he picked up the mail that was lying there and gave it to Lutz; Lutz opened the above-mentioned letter from the Union, read it, showed it to Beauchamp, and asked if he knew anything about it. Beauchamp answered: "Yes, I do" and Lutz said, "goodbye." Beauchamp then drove to the Plainview jobsite (Plainview) on which he was working. A few moments later Goding was dropped off by

his wife at Respondent's office; he went upstairs where Lutz was with Robert Lutz; he testified that Lutz was on the phone, but when he completed the call, he put the phone down, picked up a piece of paper³ which he waved and said, "Did you sign this?" Goding asked "Why?" Lutz repeated: "Did you sign it?" and Goding said that he had; Lutz said: "Go look for another job." Goding left the office and, having no car, began to walk with his toolbox; since the Plainview jobsite was closer than his home he walked in that direction.

Byrne (who has remained in Respondent's employ during the entire period) testified that shortly thereafter he arrived at Respondent's office; Lutz had the union letter in his hand and asked Byrne if he knew about it, and he said that he did. Lutz then told Byrne (who was the assistant foreman at Plainview) to go to the Plainview jobsite, pick up a light fixture at Scott's home, and install it at the job. Byrne arrived at Plainview and took Beauchamp and Newton to Scott's home, where they learned that nobody was home. As they were returning to Plainview they saw Goding walking along the road carrying his tools; they stopped the truck and Goding got in with them and they all returned to Plainview. During this ride, Goding and Beauchamp told Byrne and Newton of their meetings with Lutz that morning. When they arrived at Plainview Byrne told Beauchamp and Goding to wait outside the building ("I couldn't see them going home"). About 10 a.m., Lutz arrived at Plainview, went inside the building to the jobsite, and asked the men who their spokesman was; they told him that Foster was their spokesman and Lutz said that he would get in touch with him. Byrne then asked if Lutz minded if he joined Foster, and Lutz said that he saw no problem with it; Lutz asked the employees if they minded having Byrne as a co-spokesman, and they said that they did not mind. Lutz told Byrne to pick up Foster and meet him at his office. Newton testified that, when he and Byrne stopped to pick up Goding, Goding told them that Lutz had asked him earlier that morning if he had signed something for the Union; when he said that he had, Lutz told him to find another job. When they arrived at Plainview, they met Beauchamp who told them that Lutz had asked him the same question and fired him as well.

Beauchamp and Goding testified that after Lutz walked past them into the building one of the employees came outside and told them that Lutz wanted to speak to all the employees. Beauchamp testified that as soon as they went downstairs Lutz told them (in front of all the men) that they could return to work. Goding testified: "... no one ever said anything to me that I was hired back or anything ... I just thought that ... I was hired back."

Prior to reciting the witnesses' testimony regarding this meeting at Plainview, it is necessary to backtrack somewhat to events occurring simultaneously with the above-recited events. Foster reported to the Twin County jobsite (Twin County) at 8 a.m. He testified that,

² The only exception is that the General Counsel alleges that Robert Lutz, the son of Respondent's owner Frank Lutz Jr., should be excluded, while Respondent alleges that he should be included. I find it unnecessary to make this determination as the Union clearly had valid authorization cards from a majority of the employees in this appropriate unit.

³ Goding testified that he could not see that it was the letter from the Union, but he thought that it was so because Kerbs told him that Lutz would be receiving the Union's letter that week.

about 8:30, he was paged on his beeper⁴ and he called the office and spoke to Lutz; Lutz said, "Well, they did it to me." Foster asked him, "What are you talking about?" Lutz said, "I got a registered letter this morning from the Union. I just fired four guys." Foster asked him whom he had fired and Lutz said, "Larry and Ray" Prior to finishing the sentence, Lutz got involved in a conversation with somebody else and the conversation ended there.

Lutz testified that he arrived at his office about 7 a.m. on June 13; he picked up the mail, and one of the letters was from the Union. He opened the letter. As he was reading it Beauchamp was coming up the stairs; he said to Beauchamp: "Do you have anything to do with this?" He said, "Yes," and Lutz said, "Goodbye." A minute later, Goding came up the stairs to the office; Lutz asked him if he had anything to do with the letter. He said he did, and Lutz said, "Goodbye." Lutz testified that he has a nervous condition and said, "Goodbye" to Beauchamp and Goding because "I didn't want to talk to them because I didn't want to get upset or start blowing my top." When Beauchamp and Goding left the office, Lutz did not know whether either had a means of transportation to their jobsite. He knew that, on occasion, Goding's wife kept their car after dropping him at the office, but he did not know if she dropped him off on that morning.

Lutz testified that he then sat down, took a pill, and relaxed for a few minutes. He decided "This is stupid" so about 9 a.m. he drove to Plainview. When he arrived at the jobsite he saw Beauchamp and Goding sitting in front of the building. He went into the building and asked Morris what was going on; Morris said that the men had gotten together. Lutz told Morris to tell Beauchamp and Goding to come in. When all the employees at Plainview were present, Lutz asked, "Before I go through all this thing, could you tell me if there is a spokesman." The employees said that Foster was their spokesman. Byrne said that he would like to represent the Plainview employees since Foster worked at Twin County, and asked Lutz if he minded. Lutz said that it had nothing to do whether he minded, "It's whether the men on the job mind." Lutz then said, "Don't talk in front of me and feel bad, I'll go upstairs." He left and, when he returned a few moments later, Morris said that Byrne would talk for them. Lutz said that he was returning to his office, and Byrne said that he would drive to Twin County, pick up Foster, and meet Lutz at the office.

Beauchamp's recollection of Lutz meeting with the Plainview employees is not very clear: "I believe he was making a proposal, or getting a representative to . . . go back to the office and see . . . what we wanted." Byrne said that he would like to be a spokesman for the men along with Foster. After Lutz left, but before Byrne went to pick up Foster, the employees conducted a brief meeting among themselves; they told Byrne, very generally, that they wanted more money, medical benefits, holidays, and vacations. Goding testified that, when he

and Beauchamp arrived downstairs, the meeting of Lutz and the Plainview employees was already taking place. They were discussing the problems at work and why the employees went to the Union rather than speaking to Lutz. Lutz asked this question of Goding and he told Lutz that, at the weekly meeting of employees, Lutz used to tell them that if they were dissatisfied with their employment, they could "take a walk." Goding testified further that Lutz said that there was "no way he was going to go Union," that the Union had previously "ripped him off" for \$180,000, but he would consider another union, Local 363, and would pay higher than the Local 363 scale. Byrne then volunteered to be a spokesman for the employees, along with Foster, and Lutz asked if the employees had any problem with that and they said that they did not. After Lutz left, Goding told Byrne that he felt they should get better pay and benefits.

Newton testified that, about 10 a.m., Lutz and Robert Lutz arrived at Plainview and called the crew together; Goding and Beauchamp were also called in. Lutz told them "that there was no way that he intended to deal with the union." Lutz then said that he was going to Twin County to tell his crew there what he had told them. After Lutz left, the men decided that they should select a representative to speak on their behalf; Byrne was the only volunteer and he was chosen.

Morris testified that, when he arrived at Plainview on the morning of June 13, only Byrne and Michael Murphy were present. A carpenter informed him that some men had been fired. He called Lutz who told him "that he had let Larry and Ray go." About 9:30 a.m., Lutz and Robert Lutz arrived at that jobsite; Lutz said that he wanted everybody downstairs and "wanted to find out what was going on." Lutz asked if they had signed cards for the Union; a majority said they had; one or two said that they did not want to say. Lutz then "stressed the point that he didn't want to go to the Union." Morris asked Lutz why he had discharged Goding and Beauchamp. Lutz said that they were the first employees he had seen after receiving the Union's letter and "he had lost his cool." Lutz then said that he and his wife Brenda "would see what they could come up with for us as far as an increase and medical benefits"; that if he recognized the Union he would lose business, and because he had existing signed commitments at specified bids he could not give the employees the increases the Union demanded. At that point, Beauchamp and Goding returned, at Lutz' request, and Lutz and Robert Lutz left. Lutz returned shortly before noon and told the employees that Foster was to be their spokesman; that all requests should be through him; there would be some kind of major medical coverage, but he was not sure of the salary increases, but they would sit down and discuss it. Lutz left the immediate area and Byrne told the others that he felt that they should have somebody representing the Plainview men, and he volunteered; the others acquiesced. When Lutz returned they informed him that Byrne would be representing them.

Meanwhile, back at Twin County, Foster was beeped about 10:30 or 11 a.m. Foster testified that he called Re-

⁴ Respondent gave certain of its employees beepers, and would call a certain telephone number which would activate the beeper. This was the signal for the employee to call the office.

spondent's office and Lutz told him to speak to the men about their problems; he would represent the Twin County men and Byrne would represent the Plainview men, "as far as salary requests or whatever it happened to be," and that he would call them to the office later to talk about it. Foster then met with the Plainview employees, and told them of his conversation with Lutz. They informed Foster that they were principally interested in an increase in salary, a medical plan, and improved benefits.

He testified further that about 1 p.m. he was beeped again; he called the office and was requested to come to the office. Present at this meeting were Lutz, Brenda and Robert Lutz, Byrne, and himself. Foster testified that Lutz began the meeting by asking Byrne and him what the men wanted; Foster said that they were interested in more money and medical coverage. Lutz said that he could not do that; everybody was scheduled for a raise Christmastime, and he possibly could give the employees an immediate raise and another raise at Christmas. Brenda Lutz commented that the employees should only be given one raise a year. Lutz then took out the employees' employment applications and, in general terms, gave his opinion of whether the employees deserved raises; he told Foster and Byrne that he would study these applications, and get back to them later in the day. Foster then returned to Twin County and told the men that Lutz was going to make a proposal to him later in the day.

Byrne testified that Lutz asked: "What do you want?" Byrne answered that he did not want to be a spokesman for the men without knowing of their demands. Lutz told them to return to their jobs and "find out what they want and come back this afternoon." He returned to Plainview and asked the men what they wanted. They said that they wanted more money, vacations, and Blue Cross/Blue Shield and wanted to know how many holidays, sick days, and personal days they were entitled to.

Lutz testified that at this first meeting in his office he asked Foster what was going on and Foster said that the men wanted better working conditions. Lutz asked them to be more specific and Byrne mentioned an \$18 hourly wage rate. Lutz asked them if they were aware that he had existing contracts based on a substantially lower wage rate and that he could not afford it. Byrne said that he would go back to Plainview and see what the men were most interested in. Lutz asked them to get back to him later that day.

About an hour later, Foster and Byrne returned to Respondent's office; again, Lutz, and Robert and Brenda Lutz were present. Foster testified that Lutz had the employment applications of each of the employees. He discussed each employee's qualifications and stated what raise each employee would be given; they ranged from zero to a \$1.50 hourly. Foster did not respond to this. Lutz said that Respondent would pay for Blue Cross/Blue Shield coverage for employees employed in excess of 3 months. Lutz also said that he could not afford to recognize the Union at the time but, if he had to, he might do so at a later time. Lutz also said that this depended "upon how much grief he got from Fred

Kerbs" and "what the reaction was of the men to the propositions, he may have to close his doors."

Byrne testified that at this second meeting Lutz asked what they wanted and Foster said they wanted more money; when Lutz asked how much more, Byrne said that he wanted to see the men brought up to scale that is paid on Long Island, which he identified as \$10.50 or \$11 an hour. Lutz answered that he could not do that immediately but he could give half the increase immediately, and the other half in December, which he and Foster agreed to. Lutz then discussed each employee, their qualifications, and what increase he would receive, half then and the remainder in December. Both he and Foster participated, and gave Lutz their opinion of what raise the employees should receive. Lutz also informed them of the vacations and holidays the men would receive.

Lutz testified that they met about 1 or 2 p.m. Lutz asked them: "How do you want to handle it?" They said that they wanted the men raised to scale; some other local contractors were paying about \$11 an hour to mechanics. Lutz said that he could not agree to that, "but we can work it out that you get a raise now and then at the end of the year." He told them that as far as holidays, "you're getting them now"⁵ and as regards to Blue Cross/Blue Shield, they were presently receiving it "on a voluntary basis" until they had been employed for 3 or 6 months, at which time Respondent paid for it; that four or five employees were already receiving this coverage.⁶ Foster and Byrne asked about vacations and Lutz told them that nobody had been employed for a full year, so they should wait until December for that. Either Foster or Byrne asked him to discuss each of the employees separately regarding the raise he would be willing to grant; Lutz said that was fair and he gave Foster and Byrne a pad and pen and they proceeded to discuss the employees. Scott's name came up first and either Foster or Byrne said that he should fire Scott because he was often arguing with his fellow employees. Lutz refused because: "I don't like to fire people and I have it on my conscience for some reason," and he told them that Scott would get a raise, although he does not remember the amount. Foster and Byrne said that the lead mechanics should receive \$11 an hour; Lutz agreed to this with half the increase granted immediately, and the other half in December—"when they ordinarily would have come up for a raise." For each of the remaining employees: "They originally made the suggestion of how much each one should get and they split it up into a dual raise." When Graham's name came up, Lutz said that he felt he was extremely slow and asked if they felt Graham deserved a raise; Foster said that he felt that Graham did not deserve a raise and Byrne said that he did not know because he never worked with him. The next name was

⁵ Lutz was not certain whether there were six or seven paid holidays, at the time.

⁶ Lutz testified that at the time in question there were one or two employees who had been employed the requisite period who were not receiving Blue Cross/Blue Shield through Respondent because "they were covered by their parents"; Lutz had not informed them that they were eligible for coverage through Respondent.

Aybar; Foster and Byrne asked that he be given a raise equal to the other employees (generally 50 cents to \$1 an hour) but Lutz refused. He said that Aybar was slow and he had brought it to his attention. He would give Aybar a 50-cent hourly raise and, if his work improved, he would get an additional raise. Lutz asked Foster if he was satisfied with his responses, and Foster said that he could not answer for the other men; he would speak to them about it and contact Lutz the following day.

Ragusa testified that, when Foster returned to Twin County, he assembled Aybar, Graham, Loney, and himself; he informed them of the wage increases offered by Lutz (it was \$1 an hour for Ragusa) and a Blue Cross/Blue Shield coverage for the employees only; they would have to pay for coverage for family members. Foster informed them that he wanted to know if they were agreeable to this, because he had promised Lutz that he would have an answer for him. They told Foster they would not agree to this and Foster said that he would inform Lutz of their response. Aybar testified that when Foster returned he informed Aybar that Lutz offered him a 50-cent hourly increase, with an additional 50 cents if his work improved; Lutz offered no increase to Graham. Foster mentioned Blue Cross/Blue Shield coverage, but Aybar could not recollect any specifics in that regard. The employees turned it down.

At the same time, Byrne informed the Plainview employees of Lutz' proposals; he testified simply that they "didn't accept it." Beauchamp testified that Byrne returned with a piece of paper with the employees' names handwritten and the amount of the proposed wage increase (if any) next to each name and he informed the employees of these amounts. Beauchamp's increase, pursuant to this proposal, was from \$4 an hour to \$5 an hour, and "I didn't mind. I was only there two weeks and I had no experience at all," but "some of the others didn't like it." Goding testified that when Byrne returned to Plainview that afternoon, he showed them a piece of paper containing the names of all the employees and what salary they were going to make if they accepted the proposals. Goding's hourly increase was to be either \$1 or \$1.50. After discussing this, the men decided not to accept this offer. Newton testified that Byrne returned with a list and Morris read from it informing the employees what their proposed hourly increases would be (Newton's increase was to be \$1 an hour); Byrne was not present for this discussion. Morris also told the employees that Lutz "offered Blue Cross or Blue Shield and that if you wanted a family package you would pay half and then he would pay some." Morris testified that Byrne returned to Plainview with a list of the proposed wage increases; they ranged from nothing to \$1.50; his was to be \$1.50. The employees voted to reject the proposal. Later that afternoon, he had a telephone conversation with Lutz who asked him what the employees' reaction was to the proposals. He said that he was not sure, that some of the employees wanted to think about it overnight. Lutz asked Morris for his reaction and Morris answered that he would rather not say at that time.

Foster testified that, on June 13, either Lutz or Robert Lutz informed the Twin County employees that Lutz or Robert Lutz would be at the jobsites at starting time the

next morning. On the morning of June 14, Robert Lutz was at Twin County at 8 a.m. He stayed for about 2 hours, went over the plans of the job, and left. He testified that neither Lutz nor Robert or Brenda Lutz is ordinarily present at Twin County at 8 a.m.; Robert Lutz has been there for different reasons on other occasions, but he had never previously reviewed the job with the same detail as he did that morning. Morris testified that on the afternoon of June 13, while Lutz was at Plainview, he told Morris that any employee who was late on three occasions in the morning, break, or lunchtime would be fired, and that either he or Robert Lutz would be at the jobsites each morning; Morris informed the other Plainview employees of this. On June 14, Lutz was at Plainview at 8 a.m.; previously, he had been at Plainview at 8 a.m. when there was some specific reason for him to be there, but "not regularly." On that morning, Morris went over the job with Lutz and discussed at what stage it was; Morris was scheduled to leave for vacation the following week and was preparing Byrne to be in charge in his place. During their discussion that morning, Lutz asked Morris what he thought of his proposal of the prior day because he heard that the Plainview employees thought it was a joke. Morris said that he did not think it was a joke, but it was not what the employees expected.

Ragusa testified that, on Monday, he heard from a fellow employee that Lutz said that somebody would be at each job to be sure that everyone was on time and the work was being performed and that any employee who was late on three occasions would be suspended. On the following morning, he saw Robert Lutz at Twin County at 8 o'clock. Aybar testified that, when Foster returned to Twin County with Lutz' proposals on June 13, he said that Lutz "would be tough now as far as being late and going to lunch on time" and that "somebody would be on the job to check us in the morning and as we went to lunch we would be checked." On the following morning, Robert Lutz was at Twin County at 8 o'clock.

Lutz testified that, "quite a while" prior to June 14, he had received complaints from the men and the contractors that his employees were arriving late for work. At that time he told his leadmen to be sure that the employees arrived for work on time and returned at the proper time from their coffee breaks. Late on June 13, he told Robert Lutz to be at Twin County early the next morning, and he would go to Plainview. When he arrived at Plainview, he waited for Morris, who arrived late, and told him that Respondent had always had a rule that employees must arrive for work on time, take no more than 15 minutes for their coffee break or 30 minutes for lunch,

... and we're going to follow it through. If they're out three times, they're going to be brought up and they're going to be let go. And he asked me if that was because of him? I said that it was not because of him, it was because of everybody. I said to him did you get an answer? And he asked me why didn't I talk to Doug, he's their spokesman.

About 10 a.m. on June 14, while Morris was showing Lutz around the Plainview job, as discussed supra, Lutz told him that the Plainview job was slowing down, and

that he would not need the full crew there, so Morris should choose two men for layoff. Rather than picking two men, the men put numbers in a hat and picked the numbers as a way of determining which two men would be laid off; however, Lutz never asked him for the names of the two men.

C. The June 14 Meeting

Foster testified that on June 14, about 1 p.m., shortly after the Twin County employees finished lunch, Robert Lutz came to Plainview. He asked Foster if Aybar had any tools that belonged to Respondent; Foster checked and said that he did not. Robert Lutz then told Foster: "Pack everything up, the tools and everything, and everybody come into the office." Foster asked him if he wanted the keys and Robert Lutz told him that he could turn them in at the office. He and the other employees went to Respondent's office; all the employees were present, as well as Lutz, and Robert and Brenda Lutz. Lutz said:

If this is what you guys set out to do, you did it. My doors are closed. I can't afford to go union. I've notified . . . my landlord that my doors are closed. I've notified my lawyers, and I can't afford to go union.

He testified that Lutz also said that, if the employees wished, they could stay for a few more days until they found other employment; Brenda Lutz said, "We're not out to screw you like you did us." Lutz asked if anybody had anything to say and a discussion ensued involving Lutz and Graham. At that point Foster got up, put his keys and beeper on the desk, and began to walk out. The other employees also got up and all walked out of Respondent's office, down the stairs and outside. While they were leaving, Robert Lutz said, "Now we're really fucked." Neither Lutz nor Robert or Brenda Lutz ever specifically said that they were fired, nor did Foster or any other employee ever say that he quit. As to why he did not return to work and why he felt he was discharged, Foster testified:

Well, the implication of the turning in of the keys and the fact that when I did turn them in, there was nothing said after that, and the expression that his doors were closed, he had notified his landlord and made other notifications that was the end.

Beauchamp testified that on June 14, in the early afternoon, Morris told all the Plainview employees to pack up their tools and go to the office. (The employees normally pack up their tools about 4:15 p.m.) When all the employees were at the office, Lutz "asked us to work out the rest of the week, and that he was closing his doors on the Friday. And, at that note, everybody got up and walked out."

Goding testified that on June 14, about 12:30 p.m. he was with Byrne, outside Respondent's office, waiting to go to another job. Before leaving for the job, Byrne told him that Lutz wanted to speak to them, and he went into the office; present were he and Byrne, Lutz, and Brenda Lutz. Lutz said, "If your goal was to put me out of busi-

ness, you've succeeded. I'm going to close my doors." Lutz then said that all the other employees were coming to the office for a meeting but first he was going to lunch and he walked out. Byrne, Goding, and Brenda Lutz stayed in the office, and about 1 p.m. all the other employees came into the office and Lutz returned. Lutz said:

. . . if your goal is to put me out of business, you've succeeded, so you can pat yourself on the back. I'm closing my doors. My Plainview job is almost finished. My Twin County job I will subcontract to another union. . . . My doors are going to be closed. If you want to stay on to me for a week while you are looking for another job . . . that's fine.

At this point, Lutz and Graham got into an argument and Brenda Lutz said, "We're not going to screw you like you're screwing us." Loney stood up and turned in his keys. The other employees also got up and began walking out; those with keys and beepers turned them in. Lutz asked them to turn in their company property. As Goding walked past him, Robert Lutz said, "Now we're really fucked."

Newton testified that about 12:30 or 1 p.m. on June 14, Morris told him and the other Plainview employees to pack their tools, lock their toolboxes, and report to the office, by order of Lutz. He and the other Plainview employees arrived at the office and Lutz said, "If you guys intended to put me out of business you succeeded. I notified my lawyers, my landlord and everybody that I'm going out of business as of Friday." They stayed in the office until the Twin County employees arrived. Lutz then said that he was going out of business as of Friday and if the employees wanted to work until that time they could stay. Brenda Lutz said that Lutz would never screw them like they screwed him and an argument ensued between Brenda Lutz and Graham over the manner that Lutz ran the business. Lutz then said, "I want the keys and beepers turned in"; all the employees with keys and beepers turned them in and all the employees walked out of the office. Robert Lutz whispered to Lutz: "Now we are really fucked."

Morris testified that he was beeped about 1 p.m. on June 14; he called the office and Lutz told him to pack up all the tools and materials and to bring the men back to the office because he was closing his doors and he wanted to tell everybody together. Morris told the Plainview employees what Lutz told him and they all went to Respondent's office. When the Plainview employees arrived at the office, Byrne, Goding, and Brenda Lutz were already there. A few moments later, Lutz entered the office and shortly thereafter the Twin County employees arrived. Lutz told them that if their aim was to put him out of business they succeeded, as he was closing his doors and going out of business. He already had notified his landlord and lawyer that as of Friday, of that week, Respondent would no longer be in existence. Lutz also said that any employees could remain, if they wished, for a few days or a week or two, and if they were looking for jobs he was friendly with some union

contractors and he would give them good recommendations. Brenda Lutz then said she would not screw the employees like they screwed them, and, about the same time, Lutz and Graham became involved in a discussion. At that point, Foster put down his beeper and keys and started to walk down the stairs; Lutz then said that anybody else with a beeper, keys, or company tools should hand them in. Morris and the others did so.

Ragusa testified that, about 1 p.m. on June 14, Foster told him and the other Twin County employees to pack up all the materials on the job and to go to Respondent's office for a meeting. At the meeting Lutz said:

... if you had any intention of putting me out of business you have done so you can all pat yourselves on the back for this. As of Friday, my doors will be closed.

Lutz also said that, if the employees wished to remain in his employ, they could do so until Friday when "his doors would be closed as Brenal Electric." Lutz and Graham then became embroiled in a discussion. Brenda Lutz then said that they were not going to screw the employees as the employees had screwed them and the employees were asked to surrender their keys and beepers or anything else belonging to Respondent. The employees who had them turned in their keys and beepers and all the employees left the office.

Aybar testified that, on June 14, he saw Foster with Robert Lutz. Shortly thereafter, Foster asked Aybar if he had any company tools and Aybar said that he did not and Aybar observed Foster telling this to Robert Lutz; that was the first occasion he was asked that, while employed by Respondent. Later that day, Foster told all the Twin County employees that Lutz had told him to send all the employees to the office for a meeting. He was one of the last to arrive, and Lutz opened the meeting by saying:

Well, you've done it, you are running me out of business, I am going to close my doors on Friday. I've already called the landlord and lawyers and they will advise Local 25 of the fact that he's closing his doors and if you want, you can work till Friday or till you find another job, but as of that Friday he said he's closing his doors ... what you did to me, you ran me out of business.

Lutz, Brenda Lutz, and Graham then became involved in a discussion; Brenda Lutz said that Lutz would not screw them, but they screwed him. As Aybar was leaving the office, either Lutz or Robert Lutz asked him for his beeper and keys; Aybar told Lutz that he had to get them from his car, which he did and put them on Lutz' desk and said goodbye.

Byrne testified that, about noon on June 14, he was beeped, and when he called the office he was told to report to the office with Goding, and they would be sent to another job. When they arrived at the office, Byrne went upstairs to get the keys to the truck. When Lutz saw him, Lutz asked him if Goding were with him; he said that he was and Lutz told him to bring Goding upstairs. Lutz also told Robert Lutz to contact Foster and

to bring all the employees to the office for a meeting. About 1 p.m. when all the employees had assembled at the office, Lutz said:

... at that time that because of the Union proposals there was no way that he could take them at this time, he could just not afford the proposals. He said if this was the case that he would eventually have to close his doors, but that he would keep them open indefinitely to help the men find jobs, if this is what they wanted to do.

Byrne testified further that, at that point, without being asked to do so by Lutz, Foster got up, turned in his keys and beeper, and walked out; the other employees, including Byrne, followed him out. The employees all went to Plainview; Foster attempted to contact Kerbs by phone, but was unsuccessful. He informed the other employees that when he did speak to Kerbs he would contact them; 15 or 20 minutes later the employees left. Byrne returned to Respondent's office later that day and has maintained his employment with Respondent. When he was hired and up to the events recited herein he was an assistant foreman, or assistant to the leadperson; at the time of the hearing he was a foreman. Prior to June 13, he was paid \$8 an hour. Pursuant to Lutz' proposals on that day, he was to be given a \$1.50 increase at that time, and an additional \$1.50 in December.

Lutz testified that, after speaking to Morris about the employees' reaction to his proposals, he spoke to Byrne (as Morris had suggested) and Foster and was told that his proposal was unacceptable; he told Byrne and Foster to return to work, that he would contact them later. About 11 a.m., he contacted Byrne to do another job with Goding; Byrne asked Lutz if they could have lunch first, and Lutz agreed. About 12:30 p.m. Byrne and Goding came to the office (the job required a truck that was at the office) and Byrne went upstairs to get the keys to the truck. Lutz told Byrne, "I can't wait any longer ... because my insides are shot." He told him to have Goding come upstairs and he would beep Morris to bring the employees from Twin County, and to make sure they lock all the tools and the equipment boxes. When the employees were assembled, he said:

If you're going to force me to take a Union contract right now, while I'm locked into these jobs, you're going to force me to go bankrupt. If that's what you want, I'll gladly help all of you get jobs with other companies or you can stay here, but I cannot take on a contract like this one. I have a lot of friends in other companies that are Union, if that's what you want, fine. If you want to stay here, I'll gladly keep you working.

One of the employees said that they were not trying to hurt him or put him out of business; Graham then questioned Lutz' ability to run the Company.

Then Jack Foster got up, he was sitting to my right and he threw his beeper on the desk and the keys to the [equipment box] from Twin County, and my

mouth opened⁷ and everybody just got up and everybody single file just piled downstairs. Doug [Byrne] was the last one to go downstairs. And I said to him as he was going downstairs, "what's going on?"

Byrne said that he would let him know, and about an hour later Byrne returned and said that he was there to work. Lutz asked where the other employees were and Byrne said that they were not returning.

There is also an issue as to whether Respondent ever made a valid offer of reinstatement to the employees; Respondent alleges that it did, and this took two forms: letters to the employees dated June 14 and August 29, and statements by Lutz and Byrne to the employees that their positions with Respondent were still available for them.

The first letter, dated June 14 and signed by Lutz, states:

This letter will serve to confirm the fact that on June 14, 1983 you voluntarily submitted your resignation as an employee of Brenal Electric, Inc.

Further it is acknowledged that you have returned all keys and beepers lawfully owned or rented by Brenal Electric, Inc.

It is further requested that any other property now in your possession and belonging to the corporation be returned immediately.

I sincerely regret your course of action.

On June 21, the Union sent the following telegram to Respondent:

Electricians you terminated last week wish to return to work for your firm. Please advise.

Respondent also sent the following letter, dated August 29, to its employees:

As I have previously indicated, please take further notice that your job with this company, from which you voluntarily resigned, is still open and available to you.

If you will contact me within seven days of the date of this letter, I will reinstate you to employment in the same position which you previously occupied.

By telegram dated September 2, the Union informed Respondent that the 7 day time limit set forth in its August 29 letter was inadequate in light of the intervening Labor Day weekend, and that if Respondent were "genuinely offering reinstatement" it would provide a more reasonable time for its employees to respond.

It should initially be noted that August 29 occurred on a Monday; 7 days from the date of this letter was September 5, also a Monday and Labor Day, a national holiday. These letters were brought to the post office for mailing on August 31, and were sent to the employees

by certified mail; the return cards for four of these letters were not dated; three were received September 1, one, on September 2 and one, on September 9. The letter to Foster was returned unclaimed. Foster testified that he never received a letter from Respondent offering him reinstatement and never received notification on or about September 1 that a letter was being held for him. The letter was sent to his home address, but there is no mail box at the home (a three family apartment); he receives his mail at the post office box. Morris testified that, after he received Respondent's letter dated August 29, he called Respondent's telephone number on its letterhead; Byrne answered and Morris told him that he "was calling in reference to the letter that I'd received about reinstatement" and that Lutz could reach him at home or on the paging device he had recently purchased. Morris gave Byrne his paging device number, but not his telephone number, as he assumed that Respondent had that number. Byrne said that he would give Lutz the message. Morris did not hear from Lutz and either the next day or the following day he called Respondent's office and left the same message with his home telephone number; he received no response. Morris further testified that about the end of July he was informed that his request for unemployment benefits had been denied because Respondent said that his job was still open for him. Morris called Lutz and informed him of this; Lutz said that his job was always there at the rate he was offered when he left. Morris said he would think about it, and later refused the offer because when he called for his last week's pay (which he received 3 weeks late) Brenda Lutz insinuated that he was responsible for missing tools at Plainview.

Lutz testified that when Byrne returned to the office on June 14, after the employees had left, in addition to sending Byrne to work, he told Byrne: "Tell the men the job is still here, nobody fired them." Later that day, Lutz went to Plainview and saw Murphy there. "I told him that his job was still there, that he started with me from school, so why didn't he stay working." Murphy said that he went along with the other employees. On the next morning, Lutz went to Plainview again; he asked Morris: "Are you coming back to work?" and Morris said maybe. Lutz said, "would you please tell the other fellows outside that their job is still here and I would like them to come back to work." Morris said that too much had occurred and too much animosity remained. Lutz then saw Murphy and repeated his offer of the prior day and asked him to tell that to the other men as well. Murphy said he would tell them, but he was sure that their answer would be the same. Later that day, Lutz again saw Morris and said: "Jim, don't forget your job is still here," and Morris said, "I'm out to bust your balls." Morris testified that, on that day, Lutz approached him and Murphy and said that they had not been fired, that they walked out on their own and that he would fight any attempt at getting unemployment benefits. He also said that his offer made the prior day stood; that was the extent of the conversation.

Lutz testified further that, when he returned to the office later that day, Graham was waiting for him; he

⁷ Lutz testified that the employees who had keys or beepers dropped them on the desk in front of him. He did not say anything to them at the time because: "I didn't have the opportunity."

apologized for what he said at the June 14 meeting. Lutz asked him if he could return to work Monday morning and he said fine. Lutz also received a call that day from Scott asking if he still had a job; Lutz said that he definitely did and Scott returned to work Monday morning, and was still employed by Respondent at the time of the hearing; Graham never called nor reported for work.

Byrne testified that at Lutz' request, "I was to get in touch with the men, as many of them as I possibly could, to let them know that their jobs were still there, that there was no animosity on his part." He so informed Newton, Aybar, Murphy, Morris, and Graham (none of whom returned pursuant to his request). He testified that he told these employees that the reason for making the calls was: "I was asked by Frank Lutz . . . to make the phone calls." Newton testified that on June 15 he received a telephone call from Byrne; he said that Lutz had hired employees who did not know what they were doing and "he suggested that I should come back and give him a hand."

IV. ANALYSIS AND CONCLUSION

Upon receiving the Union's letter on the morning of June 13, Lutz asked Beauchamp and Goding whether they knew anything about the letter or whether they had signed it. Each of these conversations was "boss to employee" and was clearly coercive; I therefore find that by asking Beauchamp and Goding these questions Respondent violated Section 8(a)(1) of the Act. After Beauchamp and Goding admitted their connection with the Union's letter, Lutz told them goodbye, as testified to by Lutz and Beauchamp, or "go look for another job" as Goding testified. Of these witnesses I found Goding to be the most credible; he was extremely articulate and direct in his testimony, and appeared to be testifying in an honest and truthful manner. Beauchamp also appeared to be a credible witness; he appeared hesitant on a number of occasions, but that may be due to his employment by Respondent at the time of the hearing. On the other hand, I did not find Lutz to be a credible witness; his testimony usually rambled as if he were trying to avoid answering the question directly. In addition, his testimony was, at times, incredulous. For example, he testified that when he said goodbye to Beauchamp and Goding he was not discharging them, he simply said it so that he would not get upset. This does not ring true; if he simply did not want to get upset he could have walked away without any additional comment. In addition, Foster (whom I found very credible) testified that, about that time, Lutz told him that he had fired four employees, including Goding and Beauchamp; Morris, whose testimony also appeared to be very credible, testified that Lutz told him that he had fired Goding and Beauchamp. And finally, Lutz was the boss of a company with 12 employees and his son, and, at the time, basically only two jobs. It is reasonable to assume that he knew where his employees were going each morning, and even if he had only said goodbye to Goding, with nothing more, he knew that Goding was being left out in the cold. Therefore, even if I did not credit the testimony of Goding (and Beauchamp) over Lutz, I would still find that on June 13 he discharged them because they

admitted their support for the Union, in violation of Section 8(a)(3) of the Act. As they were returned to work that same day, there is no backpay involved in this violation.

Respondent also violated Section 8(a)(1) of the Act when, later that morning, Lutz asked Byrne about his knowledge of the union letter, and when he asked Morris what was going on; he obviously meant what was going on with the Union. When Lutz met with the Plainview employees later that morning he had already received the Union's letter requesting recognition and bargaining as the collective-bargaining representative of Respondent's employees. Under the law, the employees' "spokesman" was therefore the Union; by asking the employees who their spokesman was, he was dealing directly with the employees and soliciting grievances from them and bypassing the Union in violation of Section 8(a)(1)(5) of the Act.

Without further discussing the testimony of each of the witnesses regarding the meetings that day, it is clear that at his meetings with the employees, and his meetings with Foster and Byrne that day, Lutz dealt directly with the employees by soliciting grievances from them, thereby further bypassing the Union; promised the employees substantial improvements in their working conditions if they would withdraw their support of the Union,⁸ threatened to close his operation rather than recognize the Union; and informed his employees that he would never deal with the Union, all in violation of Section 8(a)(1)(5) of the Act.

The next issue to be determined is whether Respondent's rule providing for discharge of any employee who was late on three occasions (with Lutz or Robert Lutz at the jobsites the next morning to monitor) was discriminatorily motivated. Lutz' explanation that he put this rule into effect because of complaints he had received from contractors and other employees appears ingenuous; while he testified that he had first received these complaints "quite a while" prior to June 14 he never explained why he waited until that day, the day he received the Union's request for recognition, to put the rule into effect. More believable is Morris' testimony that, on the morning of June 14 (the first morning of the rule's existence) as he was discussing the Plainview job with Lutz, Lutz asked him what he thought of his proposals the prior day, as he had heard that the Plainview employees thought it was a joke. Lutz, as well, testified that he told Morris (in this conversation on the Morning of June 14) that the rule was not instituted because of his being late, but because of everybody. He then asked Morris if the men accepted his proposal. It is therefore clear that this rule was established in retaliation for the employees' activities on behalf of the Union and, absent that, Respondent would not have instituted this rule. It therefore violated Section 8(a)(1)(3) of the Act.

⁸ Whenever there are conflicts herein, I have credited the testimony of Foster over that of Lutz or Byrne. Even if I have not done so, however, and found that at their second meeting, on June 13, it was Byrne and Foster who suggested the amounts of the proposed wage increases, I would still find that this violated Sec. 8(a)(1) of the Act as they were there, for that purpose, at Lutz' instigation.

Although the transcript contains numerous versions of what occurred at the June 14 meeting, the testimony of the General Counsel's witnesses was substantially similar; Byrne's testimony differed somewhat and Lutz' testimony differed substantially from their testimony. As I found Foster and Goding (as well as Morris) to be the most credible of the witnesses, I find that at this meeting Lutz said that if the employees meant to put him out of business they succeeded; that he was closing his doors, but if the employees wished to continue their employment with him until Friday they could do so. Having credited their testimony, I find that Lutz never specifically asked Foster to turn in his beepers and keys before he walked out of this meeting, although the employees who followed him were asked to do so. Respondent would contend that, because Foster returned his beeper and keys and walked out without Lutz specifically telling him to do so, he and the other employees were not discharged by Respondent. However, there was good reason for the employees to feel that they had been terminated, effective either that day or on Friday, 3 days later. Shortly prior to the meeting, Robert Lutz asked Foster if Aybar had any tools belonging to Respondent and that the employees should pack everything up. When Foster asked him if he wanted the keys, Robert Lutz said that he could turn them in at the office. Considering the prior day's events, that introduction to the meeting, and hearing Lutz say that his doors were closed, Foster had a reasonable basis for considering himself terminated. In *Ridgeway Trucking Co.*, 243 NLRB 1048 (1979), *enfd.* 622 F.2d 1222 (5th Cir. 1980), the Board and court said that they do not look to any magic words in order to determine whether employees were fired; rather the test depends upon whether considering all the factors the employees could reasonably believe that they had been discharged. "It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure has been terminated." *NLRB v. Trumbull Asphalt Co. of Delaware*, 327 F.2d 841 at 843 (8th Cir. 1964). When one considers the previous day's events (and most especially the discharge of Goding and Beauchamp), the statements made by Lutz at the meeting that his doors were closed, and the statements prior to the meeting by Lutz and Robert Lutz, the employees could reasonably conclude that they had been discharged, and this discharge violates Section 8(a)(1)(3) of the Act.

A corresponding issue is whether Respondent ever cut off its backpay liability by making a valid offer of reinstatement to the employees. Respondent's letter to its employees, dated August 29, insisted that they contact Respondent "within seven days of the date of this letter," which was September 5—Labor Day—a national holiday. Therefore, the employees actually had until Friday, September 2 (the last business day prior to the deadline), to contact Respondent. Since these letters were not mailed until August 31, and the earliest these letters were actually received was September 1, the employees, therefore, had at the most 1 day in which to decide whether to accept Respondent's offer. This is clearly not a reasonable time for the employees to determine whether to accept this offer, and this letter did not therefore constitute a valid offer of reinstatement. *Betts*

Baking Co., 173 NLRB 1018 (1968); *Marlene Industries Corp.*, 255 NLRB 1446 at 1463 (1981); *Chromalloy American Corp.*, 263 NLRB 244 (1982). In making this determination, I have not considered Respondent's apparent bad faith in dating the letter August 29, while making it returnable on a holiday, and not mailing it for 2 days. In addition, I find it unnecessary to determine whether the statement in the letter that the employees had voluntarily resigned their employment with Respondent would, itself, nullify any effect of this letter.

Respondent also contends that Byrne's post-June 14 statements to the employees constitute valid offers of reinstatement. The Board has consistently held that communications of reinstatement made by nonsupervisory third parties do not constitute valid offers of reinstatement, absent evidence that the employer authorized the third party to act for him, and that the employees could reasonably have assumed that the third party was directed by the employer to communicate the offer of reinstatement. *Rafaire Refrigeration Corp.*, 207 NLRB 523 (1973); *Michael M. Schaefer*, 246 NLRB 181 (1979); *Canova Moving & Storage Co.*, 261 NLRB 639 (1982). Byrne's uncontradicted testimony was that he told the employees whom he called that Lutz had asked him to call them and that their jobs were available for them. As he informed them of his agency status, and the employees knew that he had returned to work, they therefore could reasonably assume that he was speaking for Respondent. I find that these were valid offers of reinstatement.

More specifically, Byrne testified that he made this offer to Newton on June 15; Newton testified that Byrne told him that Lutz had hired employees who did not know what they were doing and suggested that Newton return to Respondent's employ. Considering the circumstances, I would credit Byrne's testimony that he informed Newton, as well as the others, that he was calling on behalf of Lutz and I therefore find that this was a valid reinstatement offer. Uncontradicted was Byrne's testimony that he also made this offer to Morris about the end of June, to Murphy on June 16, and to Graham on June 16 or June 17. I also find that these conversations constituted valid offers of reinstatement.

As regards Lutz' conversations with Murphy and Morris on June 14 and 15, I credit Morris' testimony and find that no valid offer of reinstatement was made at that time. However, according to the uncontradicted testimony of Lutz, Graham came to his office on June 15, and apologized for what he said the previous day; when Lutz asked him if he wished to return to work the following Monday (June 20) he said he would do so; I find that this constitutes a valid offer of reinstatement. In addition, Morris testified that, after he was informed that he was denied unemployment benefits because Respondent said that his job was still available for him, he called Lutz about the end of July. Lutz said that his job was available for him at the rate he was offered when he left. I find that this constituted a valid offer of reinstatement. I also find that on June 15 Lutz made a valid offer of reinstatement to Scott to return to work on June 20, which he did.

The final question herein is whether Respondent's actions warrant the issuance of a bargaining order under the guidelines of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Court, there, approved the issuance of bargaining orders in "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices, "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes."

The unit was comprised of 12 or 13 employees "From the moment Lutz learned of the employees' support for the Union (reading the letter on June 13) he immediately "embarked on an unlawful course of conduct designed to stifle further union activity" (*John Cuneo, Inc.*, 253 NLRB 1025 (1981)) by discharging Goding and Beauchamp. These unfair labor practices continued unabated throughout the following afternoon with Lutz engaging in a series of unlawful interrogations, bypassing the Union and soliciting grievances directly from the employees, promising his employees benefits if they would withdraw their support of the Union, threatening to close rather than dealing with the Union, and informing his employees that he would never deal with the Union, as well as instituting a new disciplinary rule in retaliation for the employees' union support. The finale was the discharge of all his employees on June 14. All these unlawful activities occurred over a short period of time (about 30 hours) and clearly affected each of the employees in the small unit. I find that Respondent's actions come within the first category established by the Supreme Court in *Gissel*, supra, "outrageous" and "pervasive." However, even if they do not reach this level, they are certainly serious enough to warrant the issuance of a bargaining order. *Plumbers & Pipe Fitters Local 669 (John Cuneo, Inc.) v. NLRB*, 681 F.2d 11 (D.C. Cir. 1982).

CONCLUSIONS OF LAW

1. The Respondent, Brenal Electric, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by:

(a) Interrogating its employees regarding their support for the Union.

(b) Promising to grant wage increases and other benefits to its employees if they would withdraw their support of the Union.

(c) Threatening to cease its operations rather than negotiate with the Union.

(d) Threatening its employees that it would refuse to deal with the Union.

4. Respondent violated Section 8(a)(1) and (3) of the Act by:

(a) Discharging employees Larry Beauchamp and Raymond Goding Jr. on June 13, 1983.

(b) Discharging the following employees on June 14, 1983: Peter Aybar, Kenneth Newton, John Foster, Raymond Goding Jr., James Morris, Thomas Loney, Perry Ragusa, Herbert Graham, Michael Murphy, Douglas Byrne, Robert Scott, and Larry Beauchamp.

(c) Instituting a disciplinary rule for employees' lateness, in retaliation for its employees' support of the Union.

5. Respondent violated Section 8(a)(1) and (5) of the Act by:

(a) Dealing directly with its employees and bypassing the Union at a time when they had selected the Union as their collective-bargaining representative.

(b) Soliciting grievances from its employees at a time when the Union was designated as their collective-bargaining representative.

6. The following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time electrician employees of Respondent employed at its Hicksville, New York and Plainview, New York jobsites, exclusive of all office clerical employees, professional employees, guards and supervisors as defined in the Act.

7. Since June 6, 1983, and at all times material thereafter, the Union represented a majority of the employees in the above-described unit, and has been the exclusive representative of all said employees for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

8. By refusing to recognize and bargain with the Union, as the exclusive collective-bargaining representative of its employees in the above-described unit, since June 13, 1983, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

9. The aforesaid are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent unlawfully terminated Beauchamp and Goding on June 13; however, as they were reinstated later that same day without loss of pay no reinstatement or backpay remedy is required. I have also found that Respondent unlawfully discharged all its unit employees (except for Robert Lutz) on June 14; however, I have found that valid reinstatement offers were made to the following employees: Newton, Morris, Murphy, and Graham, although none accepted the offer. No offer of reinstatement need be made to Byrne, who returned immediately to Respondent's employ and suffered no loss of earnings; to Scott, who was offered reinstatement on June 15 and returned to Respondent's employ on June 20; or to Beauchamp who returned to Respondent's employ in September. I shall recommend that Respondent be ordered to offer to Aybar, Foster, Goding, Loney, and Ragusa full and immediate reinstatement to their former positions or, if those positions no

longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges. I shall also recommend that Respondent be ordered to make all these employees whole, in accordance with the above findings, for any loss of earnings suffered as a result of the discrimination against them by payment of a sum equal to that which each would have earned, absent the discrimination, with backpay and interest computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977); see generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

For the reasons set forth above, I shall also recommend that Respondent be ordered to recognize and, upon request, to bargain with the Union as the exclusive bargaining representative of the employees in the above-described appropriate unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Brenal Electric, Inc., Hicksville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees regarding their support for the Union.

(b) Promising to grant wage increases and other benefits to its employees if they would withdraw their support for the Union.

(c) Threatening to cease its operations rather than negotiate with the Union.

(d) Threatening its employees that it would refuse to deal with the Union.

(e) Instituting new work or disciplinary rules in retaliation for its employees' union activities.

(f) Discharging or otherwise discriminating against its employees because of their support for the Union.

(g) Dealing directly with its employees, soliciting grievances from its employees, or otherwise bypassing the Union at a time when the Union had been designated by the employees as their collective-bargaining representative.

(h) Refusing to recognize and on request, bargain with the Union as the exclusive bargaining representative of its employees in the following unit:

All full time and regular part time electrician employees of Respondent employed at its Hicksville, New York and Plainview, New York jobsites, exclusive of all office clerical employees, professional

employees, guards and supervisors as defined in the Act.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.¹⁰

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Offer to Peter Aybar, John Foster, Raymond Goding Jr., Thomas Loney, and Perry Ragusa full and immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them, as well as Kenneth Newton, James Morris, Herbert Graham, Michael Murphy, Larry Beauchamp, and Robert Scott, whole for any loss of pay suffered as a result of the discrimination against them in the manner set forth above in the section entitled "The Remedy."

(b) Expunge from its files any reference to the termination of these employees and notify them, in writing, that this has been done and that evidence of the unlawful terminations will not be used as a basis for future personal actions against them.

(c) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the bargaining unit set forth above, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such understanding in a signed agreement.

(d) Post at its Hicksville, New York office copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 729, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS ORDERED that the complaint herein be dismissed insofar as it alleges violations of the Act not specifically found herein.

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰ Although I have found that the unfair labor practices committed herein warrant the imposition of a bargaining order, I find that they are not so egregious or widespread as to warrant a broad order. *Hickmott Foods*, 242 NLRB 1357 (1979).

¹¹ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."